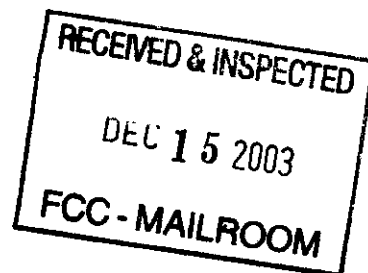


December 12, 2003



VIA OVERNIGHT MAIL & ELECTRONIC MAIL

Secretary of the F.C.C.
Attention: Office of the General Counsel
9300 East Hampton Dr.
Capitol Heights, Maryland 20743

Re: [REDACTED]

Dear Counsel:

Attached please find two appeals: Inter-Tel NetSolutions, Inc.'s Request for Review of the Decision of the Universal Service Administrator Denying Appeal by Inter-Tel NetSolutions, Inc. (FY 1999-2000), and Inter-Tel Technologies, Inc.'s Request for Review of the Decision of the Universal Service Administrator Denying Appeal by Inter-Tel, Inc. (FY 2000-2001).

Sincerely,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

Stephen H. Wong

cc: GregLipscomb@fcc.gov

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Request for Review of the Decisions of the
Universal Service Administrator by
Intel-Tel, Inc.

CC Docket No. 02-6

PROOF OF SERVICE

Stephen H. Wong
Wilson Sonsini Goodrich & Rosati, P.C.
650 Page Mill Road
Palo Alto, CA 94304-1050
Email: swong@wsgr.com

Counsel for Inter-Tel NetSolutions Inc.

December 12, 2003

Administrator's Decision On Appeal: Funding Year 1999-2000 Dated October 17, 2003

Billed Entity Number:	158862
471 Application Number:	140957
Funding Request Number(s)	298712, 299955,

PROOF OF SERVICE BY NEXT BUSINESS DAY DELIVERY

I, Anita Erickson, declare:

I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050. I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of correspondence for next business-day delivery by an express mail service. In the ordinary course of business, correspondence would be consigned to an express mail service on this date.

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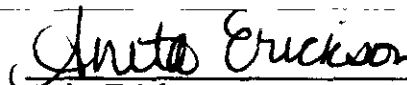
1. **Inter-Tel NetSolutions, Inc.'s Request for Review of the Decision of the Universal Service Administrator Denying Appeal by Inter-Tel NetSolutions, Inc. (FY 1999-2000); and**

2. **Inter-Tel Technologies, Inc.'s Request for Review of the Decision of the Universal Service Administrator Denying Appeal by Inter-Tel, Inc. (FY 2000-2001)**

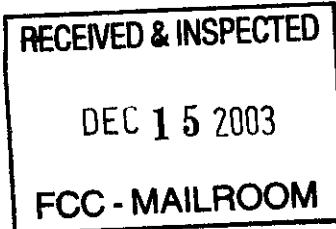
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**Federal Communications Commission
Office of the Secretary
9300 East Hampton Dr.
Capitol Heights, Maryland 20743**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Palo Alto, California on December 12, 2003.



Anita Erickson



Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Request for Review of the Decisions of the) CC Docket No. 02-6
Universal Service Administrator by)
Intel-Tel, Inc.)
)

REQUEST FOR REVIEW OF THE DECISION OF THE
UNIVERSAL SERVICE ADMINISTRATOR DENYING APPEAL BY
INTER-TEL, INC. (FY 2000-2001)

Stephen H. Wong
Wilson Sonsini Goodrich & Rosati, P.C.
650 Page Mill Road
Palo Alto, CA 94304-1050
Email: swong@wsgr.com

Counsel for Inter-Tel Technologies Inc.

December 12, 2003

Administrator's Decision on Appeal: Funding Year 2000-2001 Dated October 17, 2003

Billed Entity Number: 158862
471 Application Number: 201781
Funding Request Number(s) 448700, 448706

TABLE OF CONTENTS

	<u>Page</u>
Introduction.....	1
Statement of the Issues.....	1
Factual Background	1
Discussion.....	3
Conclusion	6

TABLE OF AUTHORITIES

Page(s)

CASES

<i>A R Carethers SDA School</i> , CC Docket 96-45, 16 F.C.C.R. 6943 (Mar. 26, 2001) available at 2001 WL 286467.....	4
<i>Changes to the Board of Directors of the National Exchange Carriers Associations, Inc.</i> , 13 FCC Rcd. 25058 (Nov. 20, 1998) available at 1998 WL 804687	6
<i>In re College Prep School</i> , CC Docket 96-45 17 F.C.C.R. 1738 (Jan. 30, 2002) available at 2002 WL 113466.....	4, 5
<i>In re Escuelas Y Bibliotecas De Puerto Rico</i> , CC Docket 96-45, 17 F.C.C.R. 13624 (Jul. 15, 2002) available at 2002 WL 141712	5
<i>In re Mastermind Internet Services, Inc</i> , CC Docket 96-45 No. FCC 00-167 (May 23, 2000) available at 2000 WL 664884.....	3, 4

STATUTES

47 C.F.R. § 54.719	1
47 C.F.R. § 54.723	1

TABLE OF ATTACHMENTS

Exhibit	Description of Attachments
1	Printout of download from USAC's Funding Request Data Retrieval Tool
2	Commitment Adjustment Letter from USAC to ALAC dated January 31, 2003
3	Letters from John Gardner to the SLD regarding appeal of Commitment Adjustment Letters for FRNs 448700 and 448706
4	SLD Decision Letter dated October 17, 2003
5	ALAC's FCC Appeal dated June 20, 2003
6	Statement of Facts by Frances B. Older and James Carter dated March 20, 2003
7	SLD instructions for FCC Form 470

Introduction

The Schools and Libraries Division (“SLD”) of the Universal Service Administrative Company (“USAC”) denied Inter-Tel’s appeal of SLD’s Year 2001 Funding Commitment Adjustments for the Funding Request Numbers (“FRN”s) and application number listed above. Pursuant to 47 C.F.R. § 54.719 Inter-Tel Technologies Inc. (“Inter-Tel”) hereby appeals that decision. The SLD found a competitive bidding violation based on: (1) a mistaken belief that independent E-rate consultant Frances B. Older (“Fran Older”) was formerly associated with both the E-Rate Applicant, Approach Learning Assessment Centers (“ALAC”) and with LW Associates, an E-Rate service provider; and (2) a misreading of FCC precedent to require that the SLD find that *all* service providers associated with an applicant have committed a competitive bidding violation whenever any *one* of those service providers has an improper relationship with the applicant. Either one of these errors requires reversal of USAC’s decision denying Inter-Tel’s appeal. This appeal is reviewed *de novo*. 47 C.F.R. § 54.723.

Statement of the Issues

1. Whether the administrator correctly determined that consultant Fran Older is associated with the service provider LW Associates.
2. Whether the Administrator correctly construed the Commission’s decision in *MasterMind Internet Services, Inc* to find every service provider on an applicant’s form 471 violates the competitive bidding process whenever any one service provider is associated with an applicant’s contact person.

Factual Background

Inter-Tel was one of three service providers working on the Approach Learning Assessment Center’s (“ALAC”) year 2001 E-Rate projects. According to information available on the SLD web-site, the other service providers were AT&T and LW Associates. *See* Exh. 1 (Printout of download from USAC’s Funding Request Data Retrieval Tool,

<http://www.sl.universalservice.org/funding/opendatasearch/Search1.asp> downloaded on Dec. 10, 2003). Inter-Tel has no affiliation with LW Associates.

In Commitment Adjustment Letters dated January 31, 2003, the SLD denied funding for the above-referenced FRNs, finding a competitive bidding violation based upon a perceived association between Fran Older and LW Associates. *See* Exh. 2 (Commitment Adjustment Letters from USAC to ALAC dated January 31, 2003). According to these letters, zero dollars were disbursed for these FRNs. Inter-Tel is nonetheless appealing this decision in accord with its appeals for other funding years. Inter-Tel timely appealed these commitment adjustments on March 28, 2003. *See* Exh. 3 (letter from John Gardner to the SLD regarding appeal of Commitment Adjustment Letters for FRN 448706).¹ The SLD denied these appeals on grounds explained below. *See* Exh. 4 (SLD Decision Letter dated October 17, 2003).

ALAC had hired Fran Older, an independent E-Rate consultant, to help it apply for E-Rate funding. Based on correspondence submitted with ALAC's FCC Appeal, LW Associates appears to have filled out its FCC Form 473 in 1998 listing Fran Older as LW Associates' contact person under the mistaken assumption that correspondence and questions on Form 473 should be directed to the applicant's contact person, not the service provider's. *See* Exh. 5 (Approach Learning and Assessment Centers' FCC Appeal of SLD Denial of Appeal, CC Docket Nos. 96-45 and 97-21, (Jun. 20, 2003)). Based on two Statements of Fact filed by ALAC with the SLD, Inter-Tel has no reason to doubt that Fran Older is not now, and never has been, a consultant to LW Associates. *See* Exh. 6 (Statement of Facts by Frances B. Older and James Carter). In so far as the SLD relies on the similarity of Fran Older's address to LW Associates' address, these statements explain that Fran Older set up a mailbox at LW Associates' offices at

¹ At this time, Inter-Tel is unable to locate a copy of its appeal for FRN 448700. However, USAC's October 17, 2003 Decision Letter, attached as Exh. 4, indicates the SLD did receive Inter-Tel's appeal for this FRN.

5319 University Drive, Irvine, CA, for the sole purpose of expediting receipt of time sensitive E-rate correspondence. *See id.* Fran Older never kept an office on the premises of LW Associates. *See id.*

In its initial appeal filed with USAC, Inter-Tel made plain that Fran Older is not an Inter-Tel employee. *See* Exh. 3. In denying Inter-Tel's appeal USAC never claims Inter-Tel has any association whatsoever with Fran Older. *See* Exh. 4.

Discussion

When it denied Inter-Tel's appeal, USAC misunderstood the facts and misread Commission precedent. USAC stated that it denied Inter-Tel's appeal because: (i) it believed Fran Older was associated with LW Associates while she was a contact person for ALAC; and (ii) it construed the FCC's decision in *In re Mastermind Internet Services, Inc.*, CC Docket 96-45, No. FCC 00-167 (May 23, 2000) (2000 WL 664884), to require finding a violation of E-Rate program rules as to every service provider working for ALAC including Inter-Tel, even though Inter-Tel does not employ Fran Older and is not affiliated with LW Associates.

The two Statements of Fact filed with the Commission as part of ALAC's appeal indicate Fran Older is not associated with LW Associates. In support of its finding that Fran Older is associated with LW Associates, the SLD cites only its earlier validation of Fran Older as the contact person for LW Associates. The SLD does not reveal the source of this validation. Assuming the SLD's validation is based on LW Associates' 1998 form 473, the SLD's reliance on this form ignores both Fran Older and LW Associates' statements that LW Associates erred when it filled out this form and that Fran Older was never, in fact, associated with LW Associates.

In re Mastermind found a violation of the Commission's competitive bidding requirements where MasterMind Internet Services Inc. ("Mastermind") participated in the bidding process while one of its employees was listed as the applicants' contact person. CC Docket 96-45 at ¶ 9. If, in fact, Fran Older was never associated with LW Associates, no *MasterMind* violation occurred.

Moreover, even if Fran Older was improperly associated with LW Associates, neither *Mastermind* nor any of its progeny hold Inter-Tel liable for LW Associates' violation.² Citing only *Mastermind*, the SLD concludes that a competitive bidding violation by an applicant and one service provider taints every service provider working for that applicant. *See* Exh. 4.

Mastermind does not so hold. On its face the decision applies only to the service provider maintaining the improper relationship with the applicant. Nowhere does it purport to disqualify every service provider bidding on a project.

On the contrary, the decision implicitly affirms that other service providers are *not* affected by one service provider's violation. *Mastermind* concerned a situation where multiple service providers bid on many Form 470s. *Id.* at ¶ 1n.3 & Appendix A. Mastermind argued that, notwithstanding its participation, the bidding processes were open and fair, citing several instances in which its bids were not accepted in support of this claim. *Id.* at ¶11. Significantly, while rejecting MasterMind's claims that the acceptance of other service providers' bids shows the bidding process was open and fair, the decision does not withdraw funding from those bids — even though MasterMind conceded it was involved in writing the Form 470s. *Id.* at ¶¶ 6,11. Since those other bidders did not have an improper relationship with the applicants, merely

² Every FCC decision applying *Mastermind* considers a context where the service provider that was denied funding itself had an improper relationship with the applicant. *See e.g. A R Carethers SDA School*, CC Docket 96-45, 16 F C C.R. 6943 (Mar 26, 2001) available at 2001 WL 286467; *In re College Prep School*, CC Docket 96-45 17

bidding on a Form 470 written by some other service provider's employee did not constitute a competitive bidding violation in *Mastermind*. In contrast, the SLD's rejection of Inter-Tel's appeal turns *Mastermind* upside-down, penalizing the very competitor that, under *Mastermind*, suffers from LW Associate's alleged improper relationship with ALAC.

The SLD's own instructions on filling out FCC Form 470 are ambiguous. These instructions state: "If a service provider is involved in preparing the Form 470 and that service provider appears on the associated Form 471, this will taint the competitive bidding process and lead to denial of funding requests that rely on that Form 470." See Exh. 7 (SLD instructions for FCC Form 470 available at: <http://www.sl.universalservice.org/applicants/form470.asp>). Read in light of the facts of the *Mastermind* decision, this instruction could properly be read to disqualify funding requests only from "that service provider" "involved in preparing the Form 470." However, as applied in this case, the SLD interprets this instruction to disqualify every service provider relying on the 470 — even those who were not involved in preparing the Form 470 and who had no way of knowing the Form 470 was "tainted."

As applied by the SLD in this case, the Form 470 instruction signals a significant policy shift from the holding of *Mastermind*. Under the SLD's interpretation, service providers who did absolutely nothing wrong are deprived of payment for goods and services honestly provided. That result is patently unfair and amounts to an unconstitutional deprivation of the honest service provider's property.

With this rule, the SLD also violates its mandate to enforce the Commission's rules without creating rules on its own. The Commission has emphasized that USAC and the SLD in particular can only perform administrative functions and not make policy, interpret unclear


provisions of the statutes or rules, or interpret the intent of congress. *See Changes to the Board of Directors of the National Exchange Carriers Associations, Inc* , 13 FCC Rcd. 25058 (Nov. 20, 1998) available at 1998 WL 804687. Indeed, the SLD is expressly “prohibited from making decisions of law or policy” and must limit its activities to “implementing existing rules and policies established by the Commission.” *Id.* The SLD’s extension of *Mastermind* has no precedent in Commission rules or orders and therefore cannot serve as a basis for a violation of Commission competitive bidding rules.³

Conclusion

For the foregoing reasons, Inter-Tel respectfully requests the Commission reverse USAC’s decision to uphold the SLD’s decision affirming Year 2001 Funding Commitment Adjustment’s for the following FRNs: 641567; 641908; 642460.

Respectfully Submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation



Stephen H. Wong
Counsel for Inter-Tel Technologies, Inc.

³ Inter-Tel also joins ALAC’s argument that even if Fran Older was formally associated with both ALAC and LW Associates, no *Mastermind* violation occurred because Fran Older did not actually control the bidding process. *See* Exh. 5.

EXHIBIT 1

471 Applic: FRN	470 Applic: Applicant Name	BEN	Applicant Type	Applicant State
201781 710404	2 12E+14 APPROACH LEARNING & ASSESSMENT CENTERS	158862	SCHOOL	CA
201781 448535	2 12E+14 APPROACH LEARNING & ASSESSMENT CENTERS	158862	SCHOOL	CA
201781 448542	2 12E+14 APPROACH LEARNING & ASSESSMENT CENTERS	158862	SCHOOL	CA
201781 448580	2 12E+14 APPROACH LEARNING & ASSESSMENT CENTERS	158862	SCHOOL	CA
201781 448595	2 12E+14 APPROACH LEARNING & ASSESSMENT CENTERS	158862	SCHOOL	CA
201781 448700	2 12E+14 APPROACH LEARNING & ASSESSMENT CENTERS	158862	SCHOOL	CA
201781 448706	2 12E+14 APPROACH LEARNING & ASSESSMENT CENTERS	158862	SCHOOL	CA

Applicant Street Address1	Applicant Street Address2	Applicant City	Applicant Zip Code	SPIN	Service Provider Legal Name
2130 E. FOURTH STREET, SUITE 200		SANTA ANA	92705	1 43E+08	AT&T Wireless Services, Inc
2130 E. FOURTH STREET, SUITE 200		SANTA ANA	92705	1 43E+08	LW Associates
2130 E. FOURTH STREET, SUITE 200		SANTA ANA	92705	1.43E+08	LW Associates
2130 E. FOURTH STREET, SUITE 200		SANTA ANA	92705	1.43E+08	LW Associates
2130 E. FOURTH STREET, SUITE 200		SANTA ANA	92705	1 43E+08	LW Associates
2130 E. FOURTH STREET, SUITE 200		SANTA ANA	92705	1 43E+08	Inter-Tel Netsolutions, Inc
2130 E. FOURTH STREET, SUITE 200		SANTA ANA	92705	1.43E+08	Inter-Tel NetSolutions, Inc

Commitme	Commitme	Service_St	Funding Yr	FCDL Date	ORIG_SERVICE_ID	ORIG_TO1	ORIG_TO1	ORIG_EST	ORIG_MOI
FUNDED			2000	1/18/2002 14:30	TELCOMM SERVICES	1972	0	1972	12
FUNDED	The categ	7/1/2000	2000	1/18/2002 14 30	TELCOMM SERVICES	7330	0	7330	12
FUNDED		7/1/2000	2000	1/18/2002 14 30	INTERNAL CONNECTIONS	1449	0	1449	12
FUNDED		7/1/2000	2000	1/18/2002 14 30	INTERNAL CONNECTIONS	4681	0	4681	12
FUNDED		7/1/2000	2000	1/18/2002 14 30	INTERNAL CONNECTIONS	1042	0	1042	12
FUNDED	The categ	7/1/2000	2000	1/18/2002 14 30	TELCOMM SERVICES	7985	0	7985	12
FUNDED		7/1/2000	2000	1/18/2002 14 30	TELCOMM SERVICES	2011	0	2011	12

ORIG_ANNUAL_RECURRING_CHARGES	ORIG_TOTAL_ONE_TIME_COST	ORIG_TOT_ONE_TIME_ORIG_ESTMTD_ONE_	ORIG_TOT_ONE_TIME_ORIG_ESTMTD_ONE_
23664	0	0	0
87960	17458	0	17458
17388	107941	0	107941
56172	0	0	0
12504	0	0	0
95820	0	0	0
24132	0	0	0

ORIG_ESTMTD_ANNUAL_COST	ORIG_DISCOUNT_PCT	ORIG_REQUESTED_AMT	COMM_SE	COMMITTI	COMM_TO	COMM_TO
23664	90	21297.6	TELCOMM	0	1972	0
105418	90	94876.2	INTERNET	0	7330	0
125329	90	112796.1	INTERNAL	0	1449	0
56172	90	50554.8	INTERNAL	0	4681	0
12504	90	11253.6	INTERNAL	0	1042	0
95820	90	86238	INTERNET	0	7985	0
24132	90	21718.8	TELCOMM	0	2011	0

COMM_ES	COMM_M	COMM_A	COMM_TO	COMM_TO	COMM_ES	COMM_EST	MTD_ANNUAL_COST	COMM_DISCOUNT_I
1972	12	23664	0	0	0		23664	90
7330	12	87960	17458	0	17458		105418	90
1449	12	17388	107941	0	107941		125329	90
4681	12	56172	0	0	0		56172	90
1042	12	12504	0	0	0		12504	90
7985	12	95820	0	0	0		95820	90
2011	12	24132	0	0	0		24132	90

COMM_REQUESTED_AMT	ORIG_SERVICE_START_DT_471	ORIG_SERVICE_END_DT_471	COMM_SERVICE_START_DT_471
21297 6	7/1/2000	6/30/2001	7/1/2000
94876 2	7/1/2000	6/30/2001	7/1/2000
112796.1	7/1/2000	6/30/2001	7/1/2000
50554 8	7/1/2000	6/30/2001	7/1/2000
11253 6	7/1/2000	6/30/2001	7/1/2000
86238	7/1/2000	6/30/2001	7/1/2000
21718 8	7/1/2000	6/30/2001	7/1/2000

COMM_SERVICE_END_DT_471 INVOICE_IAUTH_DISWAVE_NUMBER

6/30/2001	NOT SET	29F
6/30/2001	NOT SET	29F
6/30/2001	NOT SET	29F
6/30/2001	SPI	50554 8 29F
6/30/2001	SPI	11253 6 29F
6/30/2001	NOT SET	29F
6/30/2001	NOT SET	0 29F